

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 35758

STATE OF IDAHO,)	2009 Unpublished Opinion No. 572
)	
Plaintiff-Respondent,)	Filed: August 19, 2009
)	
v.)	Stephen W. Kenyon, Clerk
)	
JUDY K. OATMAN,)	THIS IS AN UNPUBLISHED
)	OPINION AND SHALL NOT
Defendant-Appellant.)	BE CITED AS AUTHORITY
)	

Appeal from the District Court of the Second Judicial District, State of Idaho, Nez Perce County. Hon. Carl B. Kerrick, District Judge.

Judgment of conviction for assault, affirmed.

Robert J. Van Idour of Fitzgerald & Van Idour, Lewiston, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Rebekah A. Cudé, Deputy Attorney General, Boise, for respondent.

PERRY, Judge

Judy K. Oatman appeals from her judgment of conviction for misdemeanor assault. Specifically, Oatman challenges the district court's denial of her motion to dismiss. For the reasons set forth below, we affirm.

Oatman was charged with intimidating a witness after she confronted S.S. for testifying against her in another criminal proceeding. Oatman is a member of the Nez Perce Indian Tribe. Oatman moved to dismiss the charges against her arguing that the district court lacked personal jurisdiction pursuant to the 1855 Nez Perce Treaty which guaranteed her the unrestricted right to travel. The district court denied her motion holding that the scope of the unrestricted right to travel guaranteed by the Treaty was for purposes of trade or commerce, not immunity from criminal prosecution. The district court further held that the parties to the Treaty did not intend for it to prohibit criminal incarceration. Oatman pled guilty to an amended charge of misdemeanor assault. I.C. § 18-901(b). The district court imposed a fine of \$250 and ordered Oatman to have no contact with S.S. for two years. Oatman appeals.

Oatman argues that the district court lacked personal jurisdiction over her pursuant to the 1855 Nez Perce Treaty. She contends that her prosecution and the potential for incarceration or probation violated her unrestricted right to travel guaranteed by the Treaty. Personal jurisdiction refers to a court's power to bring a person into its adjudicative process. *State v. Beasley*, 146 Idaho 594, 596, 199 P.3d 771, 773 (Ct. App. 2008). We exercise free review over the issue of a lower court's jurisdiction. *Id.*

Article III of the Treaty provides:

And provided that, if necessary for the public convenience, roads may be run through the said reservation, and, on the other hand, the right of way, with free access from the same to the nearest public highway, is secured to them, as also the right, in common with citizens of the United States, to travel upon all public highways. . . .

Treaty with the Nez Percés, art. III, June 11, 1855, 12 Stat. 957. In support of her argument, Oatman relies on *United States v. Smiskin*, 487 F.3d 1260 (9th Cir. 2007). In that case, the Ninth Circuit interpreted a provision of the 1855 Yakama Treaty which contained similar language granting members of the tribe the right, in common with citizens of the United States, to travel upon all public highways. The court held that members of the Yakama Tribe could not be subjected to criminal sanctions for failing to provide notice to the State of Washington before transporting unstamped tobacco for sale or trade in violation of the Contraband Cigarette Trafficking Act. *Id.* at 1266. However, in *Smiskin* and a predecessor case, *Cree v. Flores*, 157 F.3d 762 (9th Cir. 1998), the Ninth Circuit made repeated reference to the tribal members' right to travel as protecting their rights of commerce and trade. *See, e.g., Smiskin*, 487 F.3d at 1266-67. Regarding this distinction, Oatman argues:

Although not a commerce case as such, the State of Idaho's actions effectively restricted Mrs. Oatman's movements in [the] same manner all felons are restricted. She faced a limit of her freedom of movements. If a conviction resulted, she could have been stripped of her freedom of movement completely for the duration of any imprisonment. Any probation could have resulted in a ban of her right to travel outside of her probation district and outside of the State of Idaho. This would have included her right to travel to all points of the aboriginal borders of the Nez Perce Tribe.

The 1855 Nez Perce Treaty grants the members of that tribe the same right to travel that is enjoyed by all citizens of the United States. The right to travel enjoyed by citizens of the

United States may be restricted as a result of criminal incarceration or probation. *See, e.g., Jones v. Helms*, 452 U.S. 412, 419 (1981) (holding that a state may infringe upon the fundamental right to travel when “a person has been convicted of a crime within a State. He may be detained within that State, and returned to it if he is found in another State.”); *State v. Pinson*, 104 Idaho 227, 231, 657 P.2d 1095, 1099 (Ct. App. 1983) (holding that, “as a condition of granting freedom to a probationer, society has the right to impose . . . restrictions on important liberties such as the right to travel.”). Oatman argues, in effect, that the Treaty grants members of the Nez Perce Tribe an absolute immunity from any criminal prosecution which could result in a term of confinement or probation. Such immunity would not be a right *in common* with citizens of the United States.

We are also unconvinced that Oatman’s interpretation was the interpretation contemplated by the parties to the Treaty, for it subsequently provides that the tribe “agrees not to shelter or conceal offenders against the laws of the United States, but to deliver them up to the authorities for trial.” Treaty with the Nez Percés, art. VIII, June 11, 1855, 12 Stat. 957. If the parties intended that members of the tribe not be subjected to criminal proceedings which may result in incarceration or probation, such language would be unnecessary. We conclude that Oatman’s arguments are meritless. Accordingly, Oatman’s judgment of conviction for misdemeanor assault is affirmed.

Judge GUTIERREZ and Judge GRATTON, **CONCUR.**